

Approved as Submitted: December 15, 2004

**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – DECEMBER 1, 2004**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 7:04 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy; and Council Member-Elect Grzan

**DECLARATION OF POSTING OF AGENDA**

Deputy City Clerk/Deputy Agency Secretary Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Nancie Barker indicated that there have been recent articles in the Morgan Hill Times regarding the Downtown Plan. There has also been talk about having some residential units built in the downtown which she believes may be a good idea. However, she recommended that the City remain within the confines of the residential development control growth system, Measure C passed by the voters. She said that there have been comments made that the City is considering changes to Measure C. She felt that Measure C was put into place because Measure P did not allow for the care of below or moderate income housing units needed in the community. Now, that Measure C is in place, she felt that the City needs to abide by it. She said that there is also discussion about removal of planter boxes, and the removal or pruning of trees to make them smaller. She did not recommend that the City take this action as one of the things that makes Morgan Hill so nice is the beauty of the downtown that is enhanced by the shade and color of the trees/flowers. Allowing downtown restaurants to place tables on the street(s) would be nice, but not if it necessitates the removal of existing planter boxes and trees. She felt that in driving or walking the downtown area, one is able to see both sides of the street clearly. She felt that the community needs to work together to improve the businesses in the downtown and bring more people to the downtown. She stated that she would hate to see the beautiful downtown area spoiled.

Steven Shope stated his support of an In and Out Burger restaurant locating to Morgan Hill. He requested that the Council agendaize this item for discussion at its next regular meeting. He indicated that a petition is being circulated in support of an In and Out Burger.

City Manager Tewes indicated that the City Council has approved an In and Out Burger site in Morgan Hill and the permission to construct the restaurant extends to the end of March 2005. He stated that this item would return to the Council at that time if the restaurant has not been built by the project proponent.

No further comments were offered.

## ***City Council Action***

### **1. NOVEMBER 2, 2004 GENERAL MUNICIPAL ELECTION - CERTIFIED STATEMENT OF ELECTION RESULTS – Resolution No. 5866**

City Clerk Torrez presented the staff report; informing the City Council that the Santa Clara County Registrar of Voters released their Certification of election results. The action before the Council is to adopt a resolution certifying the November 2, 2004 election results.

**Action:** *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5866, Reciting the Facts of the General Municipal Election of November 2, 2004.*

Mayor Kennedy presented Council Member Chang with a Certificate of Appreciation as well as a plaque, acknowledging her for eight years of dedicated service as a Council Member. During this time, she led many efforts to the benefit of the City of Morgan Hill and the community.

Council Member Chang stated that she has enjoyed her eight years of elected service. A couple of the highlights include the extension of the Redevelopment Agency, and the creation of the Morgan Hill Community Foundation and all of the civic projects constructed, or in the process of being constructed. She thanked all citizens for their support.

Deputy City Clerk Tewes administered the Oath of Office to City Clerk-Elect Irma Torrez.

City Clerk Torrez administered Oaths of Office to Mayor-Elect Dennis Kennedy, Council Member-Elect Larry Carr, Council Member-Elect Mark Grzan, and City Treasurer-Elect Michael Roorda.

Council Member-Elect Grzan took his seat on the Dias as a Member of the City Council.

Elected officials presented comments and acknowledged family members and friends in attendance. They thanked citizens for their vote of confidence and support. Each identified goals to be achieved during their upcoming term of office, including a focus of a team approach while addressing the policies and issues the City will be facing.

Mayor Kennedy adjourned the meeting at 7:25 p.m. to a reception in acknowledgement of outgoing Council Member Chang and all elected officials: Mayor Kennedy, Council Member Carr, Council Member Grzan, City Treasurer Roorda, and City Clerk Torrez.

Mayor Kennedy reconvened the meeting at 7:50 p.m. He indicated that the presentation by the DePaul Health Center representative(s) would be deferred until after the Consent Calendar, and prior to item 13.

### **CITY COUNCIL REPORT**

Council Member Carr stated that he serves on the South County Regional Wastewater Authority Board. He indicated that Council Member Chang was the outgoing chair of this Board and that she was recognized at the last meeting. He stated that a joint meeting with the Santa Clara Valley Water District Board of Directors will be held on December 14 at 1:30 p.m. To be discussed at this meeting will be recycled water and recycled water rates, including some of the things that are taking place. He said that the Board will be hosting the meeting at the SCRWA plant located in Gilroy. Following this meeting, the SCVWD Board will be hosting a meeting at the Gilroy City Council Chambers about the state of the perchlorate issue in South County. To be discussed are the plans for the cleanup and the current status of the project. He indicated that on Monday, December 13, the City Clerk and he will be joining the Live Oak High School civics classes to talk about the items they will see when they attend Council meetings. It is his hope that students will have a better understanding of what takes place at Council meetings.

### **SUBCOMMITTEE REPORT**

None.

### **CITY MANAGER REPORT**

City Manager Tewes indicated that he reports monthly on the testing of perchlorate to ensure that the City is meeting or exceeding state and federal standards. He reported that all wells were tested at non-detect levels in accordance with state standards. He said that the Nordstrom and Tennant Wells have ion exchange treatment plants installed.

Program Administrator Eulo indicated that for the first time, Christmas morning recycling kits will be distributed to the public at the Holiday parade to be held on Saturday, December 4. After the parade, the kits will be made available at Booksmart and City Hall. The kit is designed to help individuals opening gifts to recycle paper, and includes a complete set of instructions for recycling holiday wrappings and bows, along with directions as to where one can take old toys and other items when people clean out their closets. He encouraged the public to pick up the recycling kits.

### **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **OTHER REPORTS**

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Carr requested that item 2 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-10 as follows:*

3.        **ACCEPTANCE OF DEWITT SEWER REPLACEMENT PROJECT**

**Action:** *1) **Accepted** as Complete the DeWitt Sewer Replacement Project in the Final Amount of \$419,618; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

4.        **FINAL MAP APPROVAL FOR BARRETT PLACE (TRACT 9586)**

**Action:** *1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

5.        **FINAL MAP ACCEPTANCE FOR ALICANTE PHASE II (TRACT 9603)**

**Action:** *1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

6.        **AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND THE COUNTY OF SANTA CLARA FOR EMERGENCY MANAGEMENT PERFORMANCE GRANTS**

**Action:** ***Authorized** the Mayor to Sign the Agreement Between the County of Santa Clara and the City of Morgan Hill Accepting Program Funds for Fiscal Year 2003 and 2004 Emergency Management Grants.*

7.        **SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND**

**Action:** ***Approved** the Fiscal Year 2004-2005 Spending Plan for the Supplemental Law Enforcement Services Fund (SLESF).*

8.        **JANUARY 2005 CITY COUNCIL/REDEVELOPMENT AGENCY MEETING SCHEDULE**

**Action:** *1) **Cancelled** the January 12, 2005 Special City Council Meeting; and 2) **Confirmed** the City Council/Redevelopment Agency Goal Setting Session/Retreat for January 14 and 15, 2005.*

9.        **APPROVED AGREEMENT WITH WESTON MILES ARCHITECTS FOR EL TORO YOUTH CENTER AND FRIENDLY INN SCHEMATIC DESIGN**

**Action:** ***Authorized** the City Manager to Negotiate, Prepare and Execute the Professional Services Agreement for Architectural Consultant Weston Miles Architects (WMA) for*

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*Programming and Schematic Design Services Required at the El Toro Youth Center and The Friendly Inn, Subject to Review and Approval by the City Attorney.*

**10. APPROPRIATE FUNDS TO PURCHASE A REPLACEMENT VEHICLE FOR THE BUILDING DIVISION**

**Action:** Appropriated \$25,000 from the Vehicle Replacement Fund to Purchase a Half-ton Pickup Truck and the Equipment Needed to Outfit the Truck.

**2. RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2004 QUARTERLY REPORT #3**

Council Member Carr noted that one of the projects that is behind schedule is the Watsonville-South County Housing project. He inquired whether there was anything the City can and should be doing to help South County Housing with this project. He wanted to make sure that this project is kept on schedule as close as possible.

Planning Manager Rowe informed the Council that the Planning Commission noted a number of projects that have final maps in process. He said that there were additional insured requirements that are part of the subdivision improvement agreements that have been a stumbling block for some of the projects. He stated that it was his understanding that most of the projects have been able to resolve the insurance matters and are now at a point where they are starting to record maps.

Council Member Carr noted that in the minutes from the Planning Commission meeting, Commissioner Benich inquired about MP-93-08: Villanova I-San Pedro Barton. He noted that this was a six unit project and that no building permits have been pulled or finalized with an allocation date of 1992. He said that there is apparently a long history associated with this project as suggested in the minutes. He did not know the issue nor has a need to know what the issue is. He wanted to know how the City can get these units back on track.

Planning Manager Rowe stated that four of the six units represent the affordable housing commitment of this particular project. He said that the City has learned from this and has changed the rules so that as projects are built out, below market rate units are built proportionately to the market rate units. He confirmed Mayor Kennedy's inquiry, indicating that this is the land that Habitat for Humanities has been looking at. This is the reason staff would like to preserve the allocations. If there is someone who can step in and complete the project, the allocations would be available for this purpose.

Business Assistance and Housing Services Director Toy informed the Council that staff has been working with Habitat for Humanities. He said that staff has also been speaking to the developer to try and reach an agreement for the sale of the property. He said that Habitat for Humanities has been trying to work with the developer directly to try to get him to sell the property and take a tax deduction. He said that it will take a while to purchase the land as the developer has no motivation to sell the property. He clarified that the property owner cannot develop the property unless he meets the requirements of the development agreement. However, the property owner is not required to sell the property. Staff is trying to work out a situation where it works for both parties.

Mayor Kennedy inquired whether there was anything the City could legally do to move forward with development of this project..

City Attorney Leichter indicated that there is very little the City can do under the language contained in the project's development agreement, noting that the property owner is a developer who resides in southern California. To her knowledge, he has not developed any other projects in the City.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Accepted** and **Filed** the RDCS Third Quarter Report for 2004.*

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 11 as follows:*

#### **11. APPROPRIATE FUNDS TO BUY A REPLACEMENT VEHICLE FOR THE REDEVELOPMENT AGENCY'S GRAFFITI ABATEMENT PROGRAM**

**Action:** ***Appropriated** up to \$11,000 from the RDA Fund and up to \$14,000 From the Unappropriated Equipment Replacement Fund to Purchase a Replacement Vehicle and Equipment Needed to Outfit the Vehicle.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Sellers indicated that Council Member Elect Grzan may wish to abstain from the approval of the November 17, 2004 meeting minutes as he was not in attendance of said meeting.

#### **12. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF NOVEMBER 17, 2004**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chairman Sellers, the City Council/Agency Board, on a 4-0-1 vote with Council/Agency Member Grzan abstaining, **Approved** the Minutes as written.*

### **PRESENTATION**

Joanne Allen, O'Connor Hospital, indicated that she has been working on the DePaul Health Center project for over a year which has resulted in a business plan for out patient services. She stated that the first phase of the out patient services included diagnostic imaging, laboratory, urgent care, cafeteria services and a retail pharmacy. She said that they have been reducing the capital project dollars from \$14.5 million to \$9.5 million. She said that they will be moving forward with the project. However, there were two incidents that have taken place within 90 days which were out of their control. She

indicated that the Robert F. Kennedy (RFK) Hospital, their sister hospital in Hawthorn, Los Angeles County, is scheduled to close December 8, 2004. This facility has lost over \$70 million during the last two years. She said that the Daughters of Charity is obligated for the debt associated with RFK Hospital upon closure. She said that the Daughters of Charity is in the process of supporting and paying off the debts and its financial obligation for this facility, which is significant to O'Connor's bottom line and to its cash. The second event to take place within the last 90 days is the closure of the San Jose Medical Center. As of December 1, 2004, ambulance traffic has been diverted. O'Connor Hospital is experiencing increased patient volume and has had to put together a strategic capital plan to accommodate these patients. She stated that this is another significant cash outlay of approximately \$6 million. She stated that the Daughters of Charity will not be able to fund the \$9.5 million capital investment plan for the DePaul Health Center at this time. She stated that they will be going back to the drawing board, exploring options/partnerships as well as looking at philanthropic opportunities and grant proposals to fund the project. She informed the Council that she spoke with the medical office building physicians this evening and discussed services that could be provided in the existing medical office building that is up and running. She said that there is room for urgent care and opportunities to look at basic radiology as well as a laboratory draw station. She stated that they would continue to work with the physicians and the community as well as looking toward partnerships for funding of the project. She stated that Daughter's of Charity is disappointed that they are not able to state that they are ready to proceed with the first phase and turn the lights on. However, they are hopeful about the future of the DePaul Health Center. They will go back and put together a proposal to provide health services in the community.

Mayor Kennedy said that it is his understanding that as you move into the hospital facility, it necessitates upgrading the entire facility, and bringing the building and central facilities up to code.

Ms. Allen confirmed that the initial costs would be an estimated \$5 million to bring the facility's infrastructure up to code and provide outpatient services in the building.

Mayor Kennedy stated that he met with the chief financial officer of the Daughters of Charity, Ms. Allen and Mark Olen, who outlined the dire financial picture they are facing.

Ms. Allen said that Daughters of Charity lost \$22 million as a system last year. She said that the majority of the losses came from southern California and that significant losses were associated with the RFK facility. She said that RFK will be closing as of December 8 and that these losses will be capped. However, as a sister hospital, they still have financial responsible for funding their obligation for this facility. This resulted in a significant impact to cash.

Mayor Pro Tempore Sellers felt that he heard Ms. Allen state in her presentation that the Daughters of Charity would like to continue in its interest in the community of Morgan Hill with this facility.

Ms. Allen said that the Daughters of Charity will be going back to the drawing board and will work with the Morgan Hill Health Foundation, as well as the community advisory board, and rethink its services. She felt that originally they were in one strategic plan mind set by planning to open the general acute side of the facility. She felt that this was the time to look at all opportunities. She would be reopening discussions with other healthcare providers. She said that they are committed toward working on a plan

that makes sense for the Daughters of Charity and the community. She indicated that the Daughters of Charity appreciates the commitment of the Council. She indicated that the medical office building is open and that she talked to the physicians this afternoon, inquiring as to the services that can be provided in the medical office building. She stated that there is space available to look at providing urgent care services. She said that they will be having this discussion with the physicians. The physicians have been reassured that the medical office building will remain open for business. She informed the Council that the physicians are pleased with the site.

Joe Mueller stated that the site has had a long history. When Catholic Healthcare West got into a lot of trouble, they left the City. What the Council is hearing from the Daughters of Charity this evening is that they will not run away from the City. He said that due to a couple of incidents that are not under the control of what is taking place in Coyote Valley, completion is not possible at this time. He felt that the City has determined it has a partner in the Daughters of Charity and the DePaul Health Center team to try to bring back medical services to the community. He said that the message that Ms. Allen is presenting this evening is that they are still in the community and will provide services. They have reassured the doctors that they are still here. He indicated that the new physician's practice is building nicely, and is meeting her expectations. He felt that there is some good news here, but that completion has been delayed due to impacts beyond anyone's control. He felt that the healthcare service plan needs to be re-thought out and built upon.

Brian Kelly, representing Venture Corporation, indicated that a few months ago, they came before the City Council to receive approval for an MRI laboratory in their medical condominium project to be built on Butterfield Boulevard. The Council deferred action on the MRI facility until today to see how the hospital was to proceed. He said that it is disconcerting to hear the bad news that a hospital will not be built as a City needs and wants a hospital. It is his hope that it will come to fruition as soon as possible. He said that Venture Corporation is about a week away from starting the grading on the medical condominium buildings. It was his belief that the buildings would be sold out in the next 4-5 months, indicating that they have three individuals lined up to purchase condominiums. He said that there is a window of opportunity for the MRI lab to come into this project at this time, however, the window may close. He informed the Council that he spoke to a gentleman this week who is still interested in opening an MRI facility.

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **13. ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER**

Planning Manager Rowe presented the staff report, indicating that in September 2004, the Council approved a zoning amendment to allow general office uses that would allow up to 40,000 square feet of medical/dental offices in the Venture Professional Center. At that time, concerns were expressed by members of the DePaul Health Center that there could be a potential duplication if they were to proceed with the establishment of an MRI facility at the DePaul Health Center. The Council deferred action with respect to whether an MRI facility should be allowed with this application. The Council agreed to reconsider the request on or after December 1, based on the information to be received from the DePaul



Health Center representatives. Should the Council wish to allow an MRI facility in the Venture Professional Center, the recommended action would be to adopt the ordinance attached to the staff report.

Council Member Grzan inquired whether this facility would conduct CT scans. He further inquired whether there were different licensing requirements for CT scans versus that of an MRI facility.

Mr. Kelly said that the MRI health provider would provide a full range of services; not just one. It was his belief that CT scans would be provided and that there could be a full range of imaging services.

Ms. Allen indicated that there were different licensing and shielding requirements for CT scans as opposed to MRI services.

City Manager Tewes reminded the Council that the land use decision before it relates to the uses that might be allowed within the center. The City is not specifying particular uses. By allowing an MRI facility, all services mentioned and all particular specialties could occur in this facility should the Council approve the ordinance before it this evening. Therefore, all imaging services would be allowed.

Mayor Pro Tempore Sellers stated that the Council deferred approval of the MRI use in order to make sure that it made a long term decision that would be best for the community. He felt that it was incumbent upon the Council to move forward because these services need to be advanced. He recommended that the City, along with the medical services groups, the Medical Health Foundation and others, continue to be involved. He said that there are two issues before the Council: 1) the financial viability of the facility; and 2) the long term provision of medical services. He stated that he has little doubt that as the DePaul Health Center continues to evolve, the Daughters of Charity will be able to develop facilities that would add to those in place. Should the Council move forward with the request for an MRI facility at the Venture Professional Center; it would not preclude DePaul's involvement. He felt that it was vital that the City makes sure that this connection continues and that it does not do so inadvertently. He stated that he would be supportive of taking action this evening.

City Manager Tewes clarified that the Council would be introducing an ordinance and not a resolution. He said that section 5 of the ordinance makes clear that the Council is approving a magnetic resonance imaging (MRI) facility. He noted that there was considerable discussion at the previous meeting of what is meant by an MRI. He clarified that Section 5 approves an MRI facility within the Venture Professional Center. He stated that this is the only use that the applicant has requested and nothing further.

Mr. Kelly indicated that Section 5 was not the intent of the MRI group in coming to Morgan Hill. He felt that the individual would like to offer different services for different needs and not narrow the services to MRIs. He stated that it was Venture Corporation's intent to be able to allow an MRI group to provide all resolution imaging services.

City Attorney Leichter requested that the Council table this item for a few minutes to allow staff to review the wording contained in the actual application in order to make sure that the ordinance is consistent with the application. If an MRI facility is different from a CT scan, it would not be allowed.

Mayor Pro Tempore Sellers recommended that it be determined whether or not the balance of the services are already allowed under the existing zoning. If the services are already allowed and the City is only adding an MRI facility, the Council can proceed.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) tabled this item to allow staff to review the file and determine the actual request submitted as part of this application.*

**14.    LIMITATIONS ON CURBSIDE STORAGE OF GARBAGE AND RECYCLING CONTAINERS – *Ordinance No. 1704, New Series***

Program Administrator Eulo presented the staff report, indicating that the City has received a host of complaints over the past year about individuals who may not be diligent about returning their garbage and recycling containers to a storage area following collections. He has heard complaints about some individuals storing containers on the curb and leaving them out, upsetting neighbors. He said that one can argue that the current municipal code makes this illegal but that it could be argued that the current code is not as clear as it could be about this issue. Therefore, staff has drafted a revision to the code that would limit and clearly state that starting at noon before a collection date, a resident would be allowed to be place garbage and recycling containers on the curb and that they must be put away by noon the following day. Staff believes that these time limits are flexible enough to accommodate individuals with unusual schedules. He noted that issues like this are followed up on a complaint basis.

Council Member Grzan inquired as to the definition of a “curb.”

Mr. Eulo said that the term “curb” is not defined in the City’s code but that a curb could be considered a sidewalk or street, depending on how a neighborhood was developed. He said that leaving containers on a street or sidewalk is unsightly and could get in the way of bicycles and pedestrians who happen to be in the area. He stated that it would be a violation to store containers on driveways on a long term basis as containers need to be stored out of sight.

Council Member Grzan inquired whether the ordinance would be better served if it is stated that containers need to be stored out of sight as opposed to curb.

Mr. Eulo indicated that it is the intent of the ordinance amendment to get containers off curbs. If the Council so directs, staff can take a look at how the storage ordinance is currently developed and to see if there is a policy goal to place items out of sight that necessitates further modifications.

Mayor Pro Tempore Sellers was trying to envision a scenario and the viability of storing containers. He said that it is often easier for individuals to place containers on the curb before they leave for work in the morning and remove them from the curb in the evening. He said that a few cities have a 24-hour prior to and following pick timeframe to remove containers from the curb. He felt that this limitation makes more sense because it gives residents a little more latitude. If the ordinance requires a noon to noon restriction, it may make it infeasible for individuals who are out of town on a regular basis or who commute on a daily basis. These individuals would be in violation if they place the containers out the

morning before. He recommenced that the ordinance stipulates a 24-hour before and 24-hour after clause similar to other cities as it would give residents some latitude versus establishing a specific time.

Council Member Grzan stated his support of the 24-hour limitation as it may be difficult for some families to meet the 12 hour timeline.

City Attorney Leichter and Mr. Eulo indicated that the ordinance could be amended this evening to state that containers can be placed on the curb before 6 a.m. on the date of the collection and shall be properly stored as specified no later than 6:00 a.m. the day immediately following collection.

Mr. Eulo informed the Council that the City has to come up with rules that are enforceable in the ordinance as some individuals are not putting away their containers after collection.

Council Member Grzan inquired as to how the city would communicate the change to the public.

Mr. Eulo indicated that the ordinance amendment would affect few individuals that they would be notified by the code enforcement officers. The code enforcement officer will now have a stronger tool to point to when there is a violation.

Council Member Grzan recommended that the City ask its vender to place a notice in their next billing to explain the code changes.

Mr. Eulo said that staff can request South Valley Refuse and Recycling to include a notice in the billings to be mailed. However, if it is a goal to communicate the change in the ordinance to the public, there may be other opportunities better than the one mentioned because the billing notice/newsletter goes out to several communities. He said that the City's newsletter would be mailed solely to Morgan Hill's residents and would be a better way to focus the change in ordinance.

In response to Council Member Carr's question, City Attorney Leichter stated that it was her belief that when there is a complaint/violation, a warning would be given at least once or twice before issuing a citation.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the reading in full of the Ordinance No. 1704, New Series.*

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Introduced** Ordinance No. 1704, New Series, by Title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.28 (SOLID WASTE COLLECTION AND DISPOSAL) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING GARBAGE CONTAINER PLACEMENT FOR COLLECTION**, amending Section 1 to stipulate "...Containers*

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*shall not be placed at the curbside for collection before 6 a.m. on the day preceding collection and shall be properly stored as specified in Section 13.28.050 no later than 6 a.m. the day immediately following the day after collection.” by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**13. ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER – Continued – Ordinance No. 1703, New Series**

City Attorney Leichter informed the Council that she and Planning Manager Rowe reviewed the application and the planning commission minutes as well as the environmental documentation, noting that they all refer to an MRI facility. She said that any use that would require an MRI license would be acceptable. Therefore, if a different license is needed for a CT use, this would not be an acceptable use. As the applicant applied for an MRI use, and this is what the environmental review has been predicated on, the zoning amendment would apply solely to the MRI facility. If the Council wishes to broaden the use/functions, it would have to go back through the appropriate channel.

Council Member Carr inquired as to what the process would be if the investor who wants to move forward with the facility wishes to increase the range of imaging services. He noted that it was indicated that the developer would like to proceed with ground work in approximately 10 days. He inquired whether changes that need to be made to the building would be made in the process, or whether it would impact their building schedule should changes be desired.

City Attorney Leichter responded that the applicant would simply need to amend the applications.

City Manager Tewes informed the Council that the applicant has applied for a grading permit and a shell building permit. The applicant has not applied for any building permits or tenant improvements for any uses at this point.

City Attorney Leichter indicated that it appears that the applicant would have time to amend the use permit and expand on the uses.

Mayor Kennedy opened the public hearing.

Brian Kelly said that limiting or narrowing the definition to an MRI would not allow the individual to move forward with the imaging services/functions. He said that it was the intent of the application to apply for imaging services for the community and not just MRI services.

Council Member Tate informed Mr. Kelly that he would have to submit a more specific application to allow any imaging uses that require different licensing from an MRI.

Planning Manager Rowe said that that if other imaging services are desired, he would recommend that the Council not act on the zoning amendment this evening. This would allow the City and the applicant to be clear of the definition and the range of services/scanning that can be provided within an MRI facility. He stated that the application filed with the City requested an MRI facility. What was contained

in the ordinance before the Council on August 18 was to add a third item under the permitted uses which listed an MRI facility. At that time, it was not requested to broaden the range of services to include other items. He said that it may be found that as defined, all services being requested may be covered under the type of facility being requested. However, staff would have to conduct research and report back to the Council to be certain.

Mayor Pro Tempore Sellers felt that it made sense to move forward with the MRI facility, as a defined component. If through research it is determined that what is before the Council this evening is not sufficient, he inquired as to the process and how long would it take to make the change to allow the uses desired.

Planning Manager Rowe said that if the type of services desired are not what was requested as part of this application, further amendment to the PUD would be required to add the uses into the allowable uses as listed under exhibit B. He indicated that an amendment to the PUD would take approximately 6-8 weeks because of the public noticing requirements.

Mr. Kelley stated that it was his belief that all services are needed but would agree to what the Council believes is best.

Council Member Grzan said that he would hate to see the facility filled only to find out later that the applicant was limited by what would be decided this evening. He did not believe that Mr. Kelly was not clear as to what services would be provided. He felt that the two types of modalities are different and are licensed differently. He noted that Venture Corporation would be constructing a facility as approved this evening. He recommended that Mr. Kelly find out what Venture Corporation plans to move forward on, and that the Council approve a proper ordinance that does not restrict, or cause financial harm to Venture Corporation.

Mr. Kelly stated that it was his understanding that a group of doctors would provide services and would be licensed to perform different types of procedures, offering the same services under the same roof. He clarified that Venture Corporation would be selling the four walls. The MRI group of physicians would come in and finish the structure based on the services to be provided.

Mayor Kennedy noted that staff is recommending that the Council defer action on this item until the City can receive a clear definition on what is being requested. He inquired whether this could be done by the December 15 meeting.

Council Member Carr recommended that the Council move forward with the application before it that is very specific. If the application is not what was intended by the applicant, the applicant could come back to amend the application to make the changes.

Antoinette Ludwig agreed that other imaging services such as mammograms, sonograms, and ultra sounds are needed. She recommended that all imaging services be approved and authorized.

Mayor Kennedy clarified that the Council does not know whether these imaging services are included in the definition of an MRI licensing.

Andrew Barna addressed the use of the facility and how it needs to be constructed. He indicated that an MRI is a large magnet whose shielding has to be made of lead to keep other types of electronics from being affected by the large magnet. He stated that a CT scan uses radioactive materials, indicating that the shielding for this use is different, needs to be constructed differently, and has a different environmental impact for storing radio active materials on site. He said that it is not a matter of what the physician is licensed to do, it is a matter of the facility, how it is built, and how it can provide protection for the devices/environment.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1703, New Series.*

**Action:**        *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Introduced** Ordinance No. 1703, New Series to allow an MRI facility at the Venture Professional Center, by Title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1694, NEW SERIES, EXHIBIT B (ALLOWED USES FOR DIGITAL ISLAND VENTURE PROFESSIONAL CENTER) TO ALLOW A MAGNETIC RESONANCE IMAGING FACILITY (APNs 726-25-080 thru -082) (ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Mayor Pro Tempore Sellers stated that the Council has proceeded with the same ordinance from the beginning. Therefore, he was comfortable with proceeding with this ordinance as the Council moves through this process. He said that it would be helpful for the community and the Council if it turned out that there were other facilities being requested, and that there be further discussions. He stated that a medical service is a community issue as well as an economic issue. He would agree to take this application step by step through the process in order to have the public discussion of other uses as well. If it turns out that the Council has overlooked something, the City could expedite an amendment.

Mayor Kennedy thanked O'Connor Hospital and the Daughters of Charity for the work that they are doing to bring the DePaul Health Center back into operation. He felt that it was important that the City move forward with the MRI as there is no guarantee that the City would be able to get an MRI in the DePaul facility. Therefore, it is important that the City proceed with the MRI, and thus he supports the use under this application.

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **15.    CHAMBER OF COMMERCE AGREEMENT**

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that this item would authorize the Executive Director to enter into an agreement with the Chamber of Commerce, (Chamber) to implement their economic development marketing plan. He stated that this is the second year that the Chamber is implementing an economic development marketing plan, and that in the first year they spent time establishing the structure for implementation of the plan. For this fiscal year, the Chamber will continue to implement the economic development plan. He stated that the Chamber is requesting the same level of funding as provided last year, \$125,000. He indicated that Agency funds would be used to fund direct services. The Chamber will continue to try and raise \$92,000 in private funds to augment services. He informed the Council that there is one significant difference between services this year from last year, in that the Chamber is requesting that the Agency fund approximately \$20,000 in tourism activities. He said that the rationale for this request is that there is an interrelationship between tourism and economic development. He identified the key services to be provided by the Chamber of Commerce. He indicated that the Agency would retain \$5,000 of the \$125,000 as an allowance to help pay for the use of the community center to be used for various economic development related activities.

Chairman Kennedy opened the public comment.

Don Erhler, Executive Director of the Chamber of Commerce, requested Council approval of staff's recommended action. He said that he views this as a marketing arm for the City. It is an investment in activities for economic development, and its definition of creation of jobs, business retention, and in bringing individuals to the community. He felt that every visitor to the community is a potential resident and there is a potential to bring businesses to Morgan Hill making it a much better place to be.

Bob Martin, Chamber of Commerce marketing consultant, stated his support of the contract between the Chamber of Commerce and the City. He indicated that the Chamber transitioned new leadership over the last five months and that he has been a constant player in this effort over the past 12 months. He is obliged in supporting the Chamber in submitting the detail plan before the Council that outlines the scope of the Chamber's proposed contractual work for economic development through the end of the fiscal year. He noted that the plan is an extension of activities that were previously approved by the Council, as well as several tactics that the Chamber believes will bring favorable results for the balance of the fiscal year. He stated that the strategic objectives in the coming year have not changed and would continue to attract new businesses to Morgan Hill; encouraging and establishing open lines of communication throughout the existing business community in the name of retention, including specific programs aimed at boosting local business revenue; and marketing the City to target audiences into and beyond Silicon Valley. It is the hope of the Chamber to be a sounding board and ultimately a unifying agency for the integration of most, if not all, economic development activities among the community's interested parties, public and private. He indicated that a top priority for the Chamber would be to institute and examine measurements of economic development activities successes, including a similar matrix used by the City's Business Assistance and Housing Services Department, augmented by key indicators that the economic development committee has requested. He said that tourism was included in the plan as a matter of disclosure than emblematic of unique research allocations. The Chamber of Commerce will be spending some of the money specifically on tourism.

Chairman Kennedy indicated that it has been suggested to him that a lot of Morgan Hill's businesses have a potential to refer customers and visitors to various venues in Morgan Hill. He requested that the Chamber provide copies of the Chamber's business directory to major restaurants, hotels, beauty salons, and barber shops; broadening the distribution of the directory to help business refer customers to various venues.

Agency Member Grzan stated that he is a strong supporter of the Chamber of Commerce. However, he noted that the contract is not outcome based and is based more on performance. He inquired whether the Chamber could relate anything that it is doing in terms of outcomes such as raising the City's tax base, as this would be an outcome. He felt that outcomes would allow the City to measure the effectiveness of the program.

Mr. Martin said that the Redevelopment Agency has eight matrixes that it uses to measure its effectiveness. He indicated that the Chamber will match these matrixes. The Chamber will also use the matrixes that the economic development committee has asked to be tracked (e.g., increase in sales tax revenue, net new business licenses, etc.). He noted that the Chamber of Commerce has only been conducting the plan for eight months, and that the matrices lag their activities by sometimes more than a year. He said that the Chamber of Commerce is trying to establish a baseline as of 2004 and then move forward. It is his hope that the Chamber would add 3-5% growth to what has already been seen as a return on investment.

Agency Member Carr indicated that Council Member Grzan raised a question was asked last year when the Chamber was before the Agency for the approval of a contract. He noted that staff indicated that performance measures would be provided at the end of the second quarter. He inquired whether these were the performance measures addressed by Mr. Martin in the matrices. If the matrices are a mirror to what the City's Redevelopment staff is already keeping, how would the City know that the \$125,000 investment of the taxpayers is doing in addition to what the City would be doing?

Mr. Martin did not believe that the City should expect the \$125,000 to maintain the trend, but that it should be expected to bolster the trends. It was his hope that a 3-5% increase in the various items would exceed the trend that exists by paying the City. He said that the baselines needs to be laid out. He also felt that there would be more soft results. He stated that the Chamber has been active in seeking business partners by opening a dialogue between economic development partnerships and the business community, in order to understand what some of the challenges are. He said that an open dialogue is needed with the City and its various entities. When this dialogue takes place, it is his hope that the City and the business community can become more unified in terms of identifying some of the obstacles that the entities have control over.

Mr. Erhler thanked Mr. Toy for his time and assistance in working with the Chamber. He felt that working together and partnering between the Chamber and the City is the key to accomplishing the goals of this program. It is his belief that the Chamber has the tools and expertise to make this a successful plan.

No further comments were offered.



Vice-chairman Sellers felt that the Redevelopment Agency/City is looking forward to new and better ways of doing the job that it has been trying to do for a number of years. It was his hope that the Chamber will be flexible in changing direction should the City's role change, or if there is desire to have a different role with the City as a partner. He said that this year, the City has started to see quantifiable gains that it has been hoping for. He stated that with any good economic development, the results will take a while to be realized. He looks forward to continued improvements and a continued strong partnership with the Chamber of Commerce.

**Action:** *On a motion by Vice-chairman Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Authorized** the Executive Director to Prepare and Execute an Agreement, in an Amount not to exceed \$125,000, with the Morgan Hill Chamber of Commerce to Implement Their Economic Development Marketing Plan for Fiscal Year 2004-2005.*

Chairman Kennedy requested a correction to page 133; marketing plan scope of work, item 130 should read 2004-05 (not 2003-04).

## ***City Council Action***

### **OTHER BUSINESS:**

#### **16. ACCEPTANCE OF THE AQUATICS CENTER PROJECT AND AMENDMENTS TO CONSULTANT AGREEMENTS AND PURCHASE ORDERS**

Director of Public Works Ashcraft presented the staff report, indicating that staff recommends that the Council accept the project with a change order totaling \$287,000 for a total of \$9 million, that would result in a 3.3% change order for this project. He stated that staff worked closely with the aquatics subcommittee to add enhancements to the project that totaled over \$359,000, which made the project even more successful. He informed the Council that during the last 4-6 weeks, Nova Construction has been negotiating with the contractor and that they were able to reduce the claims of the contractor over \$150,000. In response to Council Member Grzan's question, he indicated that staff would need to research the original estimated cost for the aquatics center, noting the project concept change when it went from pre design, to design, to final construction.

Mayor Kennedy indicated that there was a major change in scope that was added. This was originally proposed as a five phase project. Some of the items identified as part of phase II were moved up to be constructed in the first phase. This changed the scope and the original cost estimate significantly.

City Manager Tewes said that at the time of award on July 16, 2003 the cost for the project, including land purchase, was \$13.9 million. He noted that staff is now recommending an additional \$50,000.

Project Manager Ritter informed the Council that of the \$28,975, approximately \$9,000 was miss-coded expenses that were charged inadvertently to the CIP account, and should have been charged to operations. These funds were used for grand opening marketing costs. The other \$19,000 was used for concession revisions/start ups.

City Manager Tewes clarified that some start up costs included consultant expenses authorized by the Council. The City had a professional person come in and advise staff how to set up the equipment, conduct procedures, and the hiring of staff, that were inadvertently charged to the CIP.

Mayor Pro Tempore Sellers said that he was anticipating the arrival of the wireless internet service. He inquired whether this item was installed late in the summer.

Project Manager Ritter responded that it was his belief that wireless internet service was installed and that it would be available by next spring. He stated that he would follow up on this question.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0):*

1.        ***Accepted as Complete** the Aquatics Center Project in the Final Amount of \$9,000,000 and **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office;*
  2.        ***Amended** Consultant Agreements as Follows, Subject to Review and Approval by the City Attorney: a) Nova Partners, Inc. for an Additional Fee not to exceed \$35,000; b) Pacific Geotechnical Engineering for an Additional Fee not to exceed \$2,377; c) Biggs Cardoso Associates for an Additional Fee, not to exceed \$1,880;*
  3.        ***Amended** the following Purchase Orders: a.) Purchase Order No. 5355 with Miller Networks for Additional Installation of Voice/Data Cabling in an Amount not to exceed \$3,173.69; b) Purchase Order No. 4899 with Bay Alarm Company for Additional Fire Alarm Work and to Include Sales Tax on CCTV Equipment in a Total Additional Amount not to exceed \$1,638.25;*
  4.        ***Appropriated** an Additional \$50,000 to the Project Budget from the Unallocated Redevelopment Agency Fund Balance;*
  5.        ***Clarified** that the \$1,000,000 of Park Development Funds (CIP#110097) Allocated at Award on July 16, 2003, May be Used for Construction and Purchase of Land; and*
  6.        ***Authorized Transfer** of \$28,975.57 from Unallocated General Fund Balance to the CIP Account;*
17.        **POSTPONEMENT OF REVIEW AND REASSIGNMENTS TO COUNCIL COMMITTEES AND OUTSIDE AGENCIES**

Council Member Carr said that it would be his recommendation that the Council review its outside agency assignments after the Council's January 2005 retreat. At the retreat the Council would be setting goals and discussing items to be accomplished. Also to be discussed at the retreat would be the recommendations on how the Council can change some of the structures of how it operates. This may lead the Council in the direction that it may not need some of the assignments. Rather than making the assignments at the Council's next meeting, he recommended that the Council wait until after its goal setting session. He indicated that he took a look at former Council Member Chang's assignments to see if any of them would have anything of urgency over the next five weeks. Other than a meeting of the South County Regional Wastewater Authority to be held on December 14, 2004, a joint meeting with the Santa Clara Valley Water District Board (SCVWD), he did not believe that there were any assignments that necessitated reassignments this evening.

Mayor Pro Tempore Sellers noted that all assignments have Council alternates. Therefore, it was his belief that the Council can defer assignments for 5-6 weeks.

Mayor Kennedy recommended that a Council member he assigned to SCRWA. He volunteered to attend the next SCRWA meeting along with Council Member Carr. He supported reviewing Council assignments in January 2005.

**Action:** *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Postponement of Council review of assignments to Committees and Outside Agency Appointments Until the Conclusion of the Council's Goal Setting Session.*

**Action:** *By consensus, the City Council accepted Mayor Kennedy's willingness to represent the City of Morgan Hill at the next SCRWA meeting. The remainder of former Council Member Chang's assignments to be reviewed/assigned at the January 19, 2005 Council meeting.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Council Member Carr requested that the following items be agendized for future Council discussions: 1) Indian Gaming Casino (identification of the project); and 2) Review the list of inhibitors to economic development identified in the back of the budget for possible changes (discussion to be agendized following the Council's scheduled goal setting session).

## ***City Council and Redevelopment Agency Action***

### **CLOSED SESSIONS:**

City Attorney/Agency Council Leichter announced the below listed closed session items.

#### **1.**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:

Government Code Sections 54956.9(b) & (c)

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Number of Potential Cases: 4

**2.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:**

Authority: Pursuant to Government Code 54956.9(a)  
Case Name: Accu-Balance Associates, Inc. v. City of Morgan Hill  
Case Number: Santa Clara County Superior Court, Case No. 1-04-CV-029263

**3.**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Legal Authority: Government Code 54957  
Public Employee Performance Evaluation: City Attorney  
Attendees: City Council, City Attorney

**4.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code section 54956.9(a)  
Case Name: City of Morgan Hill v. VBN Corporation and ABSG Consulting, Inc.  
Court/Case Number: Santa Clara County Superior Court, Case Number 1-03-CV-008266.

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 9:10 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 10:05 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that authority was given to defend in the case of Accu-Balance Associates, Inc. v. City of Morgan Hill.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:07 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**